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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 379

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Petition for a Writ of Certiorari to The Supreme Court of the State of Florida

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Pan-American Life Insurance Company respectfully prays that a writ of certiorari issue to review the judgment of The Supreme Court of Florida entered herein on July 16, 1963, denying a petition for certiorari to the Florida District Court of Appeal, Third District, which affirmed a judgment entered in the Circuit Court of Dade County, Florida, in favor of the respondent herein, who was the plaintiff in the trial court.

OPINIONS BELOW

The opinion of the Circuit Court of Dade County, Florida, is reported in 19 Fla. Supp. 167, which refers to an opinion by the same court entered simultaneously in a similar case, *Raij v. Pan-American Life Insurance Company,* which is reported in 19 Fla. Supp. 162?

The opinion of the Florida District Court of Appeal, Third District, is reported in 154 So. 2d, 200. This opinion affirms, per curiam, the judgment of the Circuit Court of Dade County, on the authority of an opinion of the said District Court of Appeal, in another companion case, *Pan-American Life Insurance Company, Appellant v. Recio*, which is reported in 154 So. 2d 197.

The judgment of the Supreme Court of Florida is dated July 16, 1963, is docketed in that court under No. 32,795, and is at present unreported. It is without opinion and merely denies the petition for certiorari to the District Court of Appeal.

Your petitioner is, simultaneously with the filing of this petition in this court, also filing a petition for a writ of certiorari to the Florida District Court of Appeal, Third District, in this case. The reason for this is that counsel for petitioner is uncertain whether the denial of certiorari by the Supreme Court of Florida is based upon a lack of jurisdiction to grant certiorari in this type of case, or upon an exercise of discretion to refuse to review the decision of the District Court of Appeal.

JURISDICTION

The date of the judgment sought to be reviewed and the time of its entry is July 16, 1963. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257, (3). No rehearing has been sought. No extension of time to petition for certiorari has been sought.

QUESTIONS PRESENTED FOR REVIEW

Three questions are presented by this record. They are:

1. May the Courts of this country hold invalid a law promulgated by a recognized foreign sovereign (the Republic of Cuba) which restricted the rights of its nationals to whom money is owed to receipt of payment only in Cuba and only in Cuba pesos, without a special permit from the National Bank of Cuba?

2. May the Courts of this country enforce a contract between a Cuban national and an American corporation when such enforcement would result in the violation of a Cuban currency control law maintained and imposed consistently with Art. VIII, Section 2(b) of the Bretton Woods Agreement creating the International Monetary Fund, of which both Cuba and the United States are members?

3. May the Courts of this country hold invalid a law (and an implementing executive resolution) of a recognized foreign sovereign, which expropriated the Cuban assets of an American life insurance company doing business there, and substituted the Cuban State as the obligor on outstanding insurance policies, at least in so far as the rights of Cuban nationals are concerned?

THE STATUTES AND DECREES INVOLVED

The Statutes, Executive Agreement and Decrees involved are:

(1) Cuban Law No. 568 of September 29, 1959. The pertinent text thereof is set forth in the Appendix hereto, page 1.

(2) Cuban Law No. 851 of July 6, 1960, and Resolution No. 3 of October 24, 1960, promulgated in pursuance of Law No. 851. The pertinent text thereof is set forth in the Appendix hereto, pages 5 and 7.

(3) The Bretton Woods Agreement creating the International Monetary Fund. The pertinent text thereof is set forth in the Appendix hereto, at page 9.

(4) 22 U.S.C., Sec. 286 et seq. The pertinent text thereof is set forth in the Appendix hereto, at page 15.

STATEMENT OF THE CASE

This action was filed in the Circuit Court of Dade County, Florida, by Marie Lorido as the named beneficiary of the death benefits provided by a policy of insurance issued by Pan-American Life Insurance Company in Cuba in 1943 upon the life of her late husband. The insured died about October 6, 1960, in Cuba.

The policy had originally been payable in dollars, but the court ruled that by the subsequent conduct of the company and the insured, a novation had occurred to the extent of making the policy payable in Cuban pesos.

On January 1, 1959, the government of which Fidel Castro was and is Premier came into power. A few days later, the United States extended diplomatic recognition to that Government, which has continued to this day.

LAW NO. 568

On September 29, 1959, the Republic of Cuba adopted Law No. 568,[1] mentioned above. The text, in Spanish and English, was introduced in evidence in the trial court. Two experienced Cuban lawyers, one of them a former member of the Supreme Court of Cuba, testified that under this law it was a felony for any Cuban national to make or receive payment of a debt thereafter becoming payable anywhere except in Cuba, or in any currency except Cuban pesos, without a special permit from the National Bank of Cuba. This law also made it a felony for a Cuban national to have credits set up for him in a foreign nation, without the specified permit.

The plaintiff is and was at all times a national of Cuba and did not have the required permit.

These facts raised the first of the questions presented stated above. This question was first raised in the trial court in the answer filed by the defendant. During the trial, it was raised by the offer into evidence of the texts of Law No. 568 and the testimony of the two Cuban lawyers. It was also raised by the defendant's motion for new trial, by assignment of error on appeal, and in briefs and argument in the District Court of Appeal. The references in the partial Transcript of Record which accompanies this petition are: The answer, page 5, the text of the law, page 24, the Cuban lawyers' testimony, pages 15 and 21, the motion for a new trial, page 33. The briefs in the appellate courts are not a part of this record.

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[1]This law is sometimes referred to as a law of October 4, 1959. The discrepancy arises from the fact that the law is dated September 29, but was not published in the Official Gazette until October 4.

The opinion of the trial court just barely mentions this question, and then only as being the basis of one of the defendant's contentions, which were summarily rejected.

The opinion in this case in the District Court of Appeal, being per curiam, also does not mention this question, nor is it mentioned in that court's opinion in the *Recio* case, on the authority of which this case was affirmed.

The effect of the holding of the trial court in this case, and of the District Court of Appeal in this and the *Recio* case, is to hold Law No. 568 invalid and of no effect upon the rights of Cuban nationals, and deprives the American company of a defense properly available to it under Cuban law.

It is believed that this is, in effect, a decision denying the application of the Act of State doctrine, in circumstances in which this Court for many years has held it applicable.

THE BRETTON WOODS AGREEMENT AND 22 U.S.C. 268 ET SEQ.

In the trial court and the District Court of Appeal, the defendant took the position that Law No. 568 is the type of currency control law envisioned by the Bretton Woods Agreement, Art. VIII, Section 2 (b), the first sentence of which was specifically enacted into our domestic laws by 22 U.S.C., Section 286(h). By silently ignoring this question, the courts below have, in effect, held one or more of the following:

(a) Law No. 568 is not a currency control law of the type envisioned in Art. VIII, Section 2 (b) of the Bretton Woods Agreement.

(b) The life insurance contract, under which death benefits are sought to be recovered, is not an exchange contract which involves the currency of Cuba.

(c) That Law No. 568 is not maintained or imposed consistently with the Bretton Woods Agreement.

Since at no time did the plaintiff attack the constitutionality of 22 U.S.C. 286 et seq., we assume that the courts below did not pass upon this question. But it is believed that a federal question of substance has, in effect, been decided and decided in a way probably not in accord with applicable decisions of this court. Cf. *Kolovrat v. Oregon*, 366 U.S. 187.

LAW NO. 851 AND RESOLUTION NO. 3

Law No. 851 was promulgated on July 6, 1960. It shows on its face that it was in retaliation against the reduction of the Cuban sugar quota by the United States. It is the same law involved in the case of *Banco Nacional de Cuba v. Sabbatino, et al*, now pending in this court on certiorari granted, under No. 403, October 1962, Term. Pan-American Life Insurance Company sought, and has been granted, leave to file a brief *amicus curiae* in that case through the same counsel presenting the instant petition for certiorari.

Law No. 851 authorized the issuance of subsequent resolutions of intervention and expropriation against United States concerns and Cuban concerns subject to

American control. Resolution No. 1 under this law is involved in the *Sabbatino* case. The present case involves Resolution No. 3 thereunder.

Resolution No. 3 was promulgated on October 24, 1960. It starts off with a long recital of the reasons for its issuance. Section 1 then proceeds to decree the intervention and expropriation of a long list of businesses, broken down into groups according to the nature of their business. In group XX are listed numerous insurance companies, including Pan-American Life Insurance Company. The concerns in this group were assigned for administrative purposes to the Social Security Bank, which was authorized to appoint an administrator. Two days later, the administrator so appointed appeared at the Havana branch office of Pan-American and at gun-point took possession of the office, its records and the key to the safe deposit box in which its securities and reserves against its Cuban liabilities were kept.

Resolution No. 3 went further than expropriation. In Section 2, it provided, among other things, that the Cuban State was substituted as obligor upon the outstanding liabilities of the expropriated concerns. The plaintiff's claim for death benefits under the policy herein involved was among these liabilities.

In the trial court, the defendant offered the testimony of the same two Cuban lawyers who stated that the effect of this law and resolution was to terminate the liability of Pan-American to the plaintiff and to confine the plaintiff, a Cuban national, to her rights against the Republic of Cuba under Section 2. Their testimony was uncontradicted.

The trial court, as stated above, summarily rejected the defendant's contentions based on Law No. 851 and Resolution No. 3, although there is some discussion of them in the judge's decision in the *Raij* case decided simultaneously by the same judge. The effect of the holding was that the law and resolution were ineffectual to accomplish the result expressed in Section 2 and confirmed by the testimony of the two Cuban lawyers. The holding deprived the defendant of a defense afforded it under Cuban law.

This question was raised in the answer, by the introduction of the Spanish and English texts of the legislation, by the testimony of the Cuban lawyers, by the motion for new trial and by assignment of error on appeal. The record reference for the legislative text is page 10. All other references are the same as for Law No. 568.

It is believed that this is a decision denying the application of the Act of State doctrine in circumstances in which this Court has for many years held the doctrine applicable. As such, it is a decision of a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. This case is equally as important in the field of international relations as the *Sabbatino* case, in which this court has already granted certiorari. This case represents the obverse side of the coin under examination in *Sabbatino*. That case involves the effect of Cuban ex-

propriation on a Cuban corporation alleged to be controlled by United States stockholders. This case involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban nationals in the United States.

Pan-American Life alone had outstanding more than 6000 policies issued through its Havana branch. It is impossible to know how many of these policy-holders or beneficiaries are among the hundreds of thousands of Cubans now resident in the United States. It is known that there are many of these policies presently in litigation, and more to come. There are about twenty such suits pending in the State and Federal courts in Miami alone. Others have been filed in Jacksonville, New Orleans, Galveston, Shreveport, Raleigh, Newark, and San Juan, Puerto Rico.

One lawyer in Miami says he has two hundred more ready to be filed and one other American company is informed that several hundred more are available for filing in the New York city area alone. One Cuban lawyer is known to have run advertisements in Spanish-language papers in San Juan and Miami offering his services in the collection of policy benefits.

The pending suits involve all kinds of policy claims—death benefits, cash surrender values, annuities, endowments, as well as declarations that the companies must accept premiums to keep policies in force and pay benefits upon future demand. Some cases are in State Courts, others in the Federal courts.

Two appellate opinions have already been rendered by State appellate courts, diametrically opposed to each other.

One is the *Recio* case in Florida, referred to above. The other is a decision of the Court of Appeal of Louisiana, in the case of *Theye v. Pan-American*, not yet reported. A copy of the opinion is printed in the Appendix hereto at page 38. Even within the same court, there is confusion and difference.[2] Thus, in the *Recio* case one panel of judges held that Resolution No. 3 did not call for the application of the Act of State doctrine, while only one week later, another panel held that Resolution No. 3, applied to a Cuban corporation controlled by Americans, did require the application of the doctrine. See *National Institute of Agrarian Reform v. Kane*, 153 So. 2d 40, printed in the Appendix hereto at page 49.

All of these cases basically are to be decided upon questions of Federal law and the Federal statute and executive agreement. The decision of these Federal questions should be uniform throughout the country and free from the vagaries of decisions by courts of differing judicial systems. The only way such uniformity can be achieved is by a decision of this court. If it is adverse to the companies, they will undoubtedly pay their debts. If it is favorable to the companies, the decision of this court will put an end to the impending flood of litigation. In either event, there will be an enormous saving of money, legal manpower and judicial labor.

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[2]The *Recio* case was not analogous to this case in one important particular. The policy involved in *Recio* was at all times payable by its terms in dollars and in the United States, while the policy involved herein was payable in pesos. This is a further illustration of the confusion existing in this appellate court. In *Confederation Live Association v. Ugalde*, 151 So. 315, the same court reversed the lower court for treating a policy payable in Havana and in pesos as though it were payable in dollars.

2. The effect of the decision in this case is in conflict with numerous decisions of this Court applying the Act of State doctrine to the acts of a foreign sovereign then or later recognized diplomatically by this country. These are *Oetjen v. Central Leather Co.*, 246 U.S. 297; *Underhill v. Hernandez*, 168 U.S. 250; *American Banana Co. v. United Fruit Co.*, 213 U.S. 347; *Shapleigh v. Mier*, 299 U.S. 468; *U. S. v. Belmont*, 301 U.S. 324; *U. S. v. Pink*, 315 U.S. 203.

3. The effect of the decision in this case is to thwart the public policy of the United States, as expressed in the Bretton Woods Agreement creating the International Monetary Fund and the Congressional legislation in 22 U.S.C. 286 et seq. If Cuban law No. 568 is in fact a currency control law of the type envisioned in Art. VIII, section 2 (b) of the Agreement, if the life insurance contract here involved is an exchange contract which involves the currency of Cuba and if Law No. 568 is maintained and imposed consistently with the Agreement, the Congressional mandate and the Supremacy clause of the Constitution, require that the contract not be enforced by our courts, State or Federal.

The Oregon courts faced squarely up to this question in *Kolovrat v. Oregon*, 366 U.S. 187. The Florida courts should not be permitted to slide over this important question in silence.

4. Pan-American Life Insurance Company has pending in this court a petition for certiorari to the United States Court of Appeal for the Fifth Circuit in two cases under this Court's No. 792, October Term, 1962. That case and this overlap to some extent, in that both involve Law

No. 568. They differ in that the expropriation decree in No. 792 was Law No. 151, enacted on March 17, 1959, which set up the "black list" of proscribed supporters of Batista. The cases under No. 792 were begun in the summer of 1960, several months before the issuance of Resolution No. 3. A disposition by this Court of No. 792 will, therefore, not settle one of the most important questions involved in this case. Pan-American Life therefore urges that it would be advisable to grant both petitions, so that full consideration may be given to Law No. 151, Law No. 568 and Law No. 851 and Resolution No. 3, and their effect upon the reciprocal rights and duties between Cuban nationals and American business concerns.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari be granted.

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